Executive Summary:
Habeas Litigation in U.S. District Courts

An empirical study of habeas corpus cases filed by state prisoners under the Antiterrorism and Effective Death Penalty Act of 1996

by

Nancy J. King, J.D.
Lee S. & Charles A. Speir Professor of Law
Vanderbilt University Law School

Fred L. Cheesman II, Ph.D.
National Center for State Courts

Brian J. Ostrom, Ph.D.
National Center for State Courts

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INTRODUCTION TO THE STUDY

This study provides empirical information about the processing of state prisoner petitions seeking habeas corpus relief in U.S. District Courts under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").[1]

AEDPA and Habeas Corpus Review

The writ of habeas corpus is a remedy available in federal court to persons "in custody in violation of the Constitution . . . ." The 1996 amendments to the habeas statute were intended to reduce delays and to promote the finality of criminal convictions and sentences, particularly in capital cases. Each year, state prisoners file more than 18,000 cases seeking habeas corpus relief. This constitutes about 1 out of every 14 civil cases filed in U.S. District Courts. The study is the first to collect empirical information about this litigation, a decade after AEDPA was passed.

AEDPA changed habeas law by:

- Establishing a 1-year statute of limitations for filing a federal habeas petition, which begins when appeal of the state judgment is complete, and is tolled during "properly filed" state post-conviction proceedings;
- Authorizing federal judges to deny on the merits any claim that a petitioner failed to exhaust in state court;
- Prohibiting a federal court from holding an evidentiary hearing when the petitioner failed to develop the facts in state court, except in limited circumstances;
- Barring successive petitions, except in limited circumstances; and
- Mandating a new standard of review for evaluating state court determinations of fact and applications of constitutional law.

[1] Pub. L. No. 104-132, 110 Stat. 1214 (1996). 28 U.S.C. § 2241 - 2266.

This Study

The project is a collaborative effort of Vanderbilt University Law School and the National Center for State Courts, with funding from the National Institute of Justice and assistance from an expert Advisory Committee. Data were collected from documents in a sample of habeas cases filed in U.S. District Courts.

The non-capital case sample consisted of 2,384 cases randomly selected from nearly 37,000 non-capital habeas cases filed by state prisoners in federal district court during 2003 and 2004.

The capital case sample consisted of cases begun in 2000, 2001, and 2002 in the 13 federal districts with the highest volume of capital habeas filings (TX-S; TX-E; TX-N; TX-W; PA-E; OH-N; OH-S; CA-C; AZ; NV; AL-N; FL-M; and OK-W). This sample of 368 cases includes more than half of the capital habeas cases filed nationwide during the period, and spans six federal circuits and nine states.

This study reports:

- **Extensive descriptive information about**
  - the time elapsing from state conviction to federal filing;
  - claims raised in habeas petitions;
  - the application of defenses and limitations;
  - case processing time; and,
  - merits review and outcome.

- **Comparisons of**
  - post-AEDPA to pre-AEDPA case processing;[2] and,
  - capital-case processing to non-capital-case processing.

- **Regression analyses examining what features are associated with**
  - variations in processing time for both capital and non-capital cases;
  - variation in the time before capital cases are filed; and,
  - variation in the likelihood of relief in capital cases.

[2] Pre-AEDPA studies used as comparisons include Roger A. Hanson & Henry W.K. Daley, *Federal Habeas Corpus Review: Challenging State Court Criminal Convictions*, Washington, D.C., U.S. Department of Justice, BJS (NCJ-155504) (1995); Victor E. Flango & Patricia McKenna, *Federal Habeas Corpus Review of State Court Convictions*, 31 CAL. W. L. REV. 327 (1994-1995); Scott Gilbert & Patricia Lombard, *A Report to the Conference of Chief Circuit Judges and Circuit Executives: An Analysis of Disposition Times for Capital Habeas Corpus Petitions*, FJC (Sept. 1, 1995); and Jeffrey Fagan, James S. Liebman, Valerie West, Andrew Gelman, Alexander Kiss & Garth Davies, *Getting to Death: Fairness and Efficiency in the Processing and Conclusion of Death Penalty Cases after Furman, Final Technical Report*, Dept. of Justice Document No. 203935, Award Number 2000-IJ-CX-0035 (Feb. 2004).

The findings of the study are detailed in the Technical Report and are highlighted here. This project was designed to generate information with which policy options can be explored; policy recommendations were not within its scope.

Like all empirical studies, this one is necessarily limited by its methodology. The capital case findings have two limitations. First, the sample was drawn from cases in districts with the highest volume of capital case filings in order to facilitate data collection from documents on site. As a result, the findings may not accurately reflect capital habeas litigation in districts where such cases are filed less frequently. Second, we sampled cases *filed* together rather than *terminated* together. This permitted examination of those cases that were considered by district courts only after the Supreme Court had settled some of the more fundamental questions about the application of AEDPA and provided a consistent cohort of observations for predicting the likelihood of termination and relief. Because of this sampling strategy, however, by the close of the study not all of the cases had been completed; about 1 in 4 of the capital cases remained pending in district court. This means that some of the information reported about capital habeas litigation, time and type of disposition for example, is necessarily incomplete and should be considered tentative.

Findings about state proceedings and claims raised in the non-capital cases should be considered tentative for a different reason. Because data collection for non-capital cases was restricted to documents accessible through PACER (the on-line filing system for the federal courts) information about some of these variables was unavailable in 23% to 45% of the cases. These limitations are addressed throughout the Technical Report.

PRE- AND POST- AEDPA COMPARISONS

Compared to before AEDPA, after AEDPA:

- **Non-capital cases**
  - take longer to reach federal court after state judgment; and,
  - include more claims per petition.
- **Capital cases** include fewer evidentiary hearings in district court.
- **Both capital and non-capital cases**
  - take longer to complete in district court; and,
  - are less likely to end in a grant of the writ.

SUMMARY OF FINDINGS BY SUBJECT

Time between state judgment and federal filing

Non-capital cases. Prior to AEDPA, the average time from state judgment to federal filing was about 5 years. After AEDPA, the average time had lengthened to 6.3 years.

Capital cases. For capital cases filed in 2000, 2001, and 2002, the petitioner's state criminal judgment had been entered on average 7.4 years earlier, with a median interval of 6.5 years. Comparative figures before AEDPA are not available.

Regression analyses of filing intervals in capital cases found:

- Petitioners convicted by trial filed longer after judgment than those convicted by plea.
- Successive petitions were filed longer after judgment than first petitions.
- Cases with any claim defaulted in state court were filed longer after judgment than those with no defaulted claims.
- No effect on filing time was associated with 1) the number of claims raised in the federal petition, 2) whether the case was dismissed as time-barred, or 3) whether the case was stayed to allow the petitioner to exhaust one or more claims in state court.
- From among the nine states in the sample, petitioners in Texas and Oklahoma reached federal court soonest, while petitioners in Florida, Alabama, and Pennsylvania took the longest to reach federal court.

Claims for relief

Number of claims. More than 41% of *non-capital* cases had four or more claims, a significant increase from before AEDPA when less than 25% of cases had four or more claims. On average, petitioners in *capital* cases raised 28 claims, seven times as many as non-capital petitioners. Among the states examined, capital petitioners in Texas raised the fewest claims; those from California raised the most --80 claims on average, nearly six times the average number raised by Texas petitioners.

Attacks on administrative rulings in non-capital cases. Nearly 1 in 5 non-capital cases did *not* challenge the underlying state judgment, but instead alleged a constitutional flaw in: 1) a prison disciplinary proceeding, 2) a parole revocation or release determination, or 3) pretrial custody. The challenges to parole and disciplinary proceedings were concentrated in certain states, including Texas (35% of cases filed) and Indiana (61% of cases filed).

Selected claims raised, capital and non-capital cases compared.

Claim type	% capital cases raising claim	% non-capital cases raising claim
• Ineffective assistance of counsel	81.0	50.4
• New evidence of innocence of conviction	10.8	3.9
• False, lost, or undisclosed evidence	43.1	13.0
• Sentencing proceeding error	5.1	12.9
• Insufficient evidence of guilt	25.5	18.9
• Erroneous evidence ruling, guilt phase (other than illegal confession, search, or seizure)	45.8	19.8
• Judicial instructions or comments to jury	68.3	14.5
• Improper prosecutorial argument	48.0	10.1
• Plea or plea negotiation error	4.0*	14.8

* 10 of 349 capital petitioners were convicted by plea; 35% of the non-capital petitions were filed by a plea- convicted prisoner.

Evidentiary hearings and discovery

After AEDPA, most habeas cases continue to be concluded without evidentiary hearings or discovery in district court.

Evidentiary hearings in capital cases are less frequent after AEDPA. Only 9.5% of the capital cases in the sample included an evidentiary hearing, compared to 19% prior to AEDPA. Although some of the unfinished cases in the sample could yet include evidentiary hearings, the number is unlikely to reach the rate reported prior to AEDPA.

Evidentiary hearings in non-capital cases are rare. Of all non-capital cases only 9 included an evidentiary hearing - a rate of 1 in every 243 cases - 0.41%. The only reported source of information about evidentiary hearing rates in non-capital cases prior to AEDPA indicated a higher rate – 1.1%.

Discovery is more common in capital than in non-capital cases as well. In 12.5% of the capital cases the district court ordered a deposition or a mental or physical examination, compared to 0.3%, or 6 of the non-capital cases.

Operation of defenses

Statute of limitations. Of non-capital cases 22% were dismissed as time-barred, more than five times the proportion of capital cases (4%) time-barred. In less than 2% of capital and non-capital cases did judges explicitly *reject* the limitations defense. Of the 12 capital-case rejections, 10 were based upon equitable tolling, compared to only 12 of the 30 rejections in non-capital cases.

Successive petitions. About 7% of terminated non-capital habeas cases were dismissed as successive petitions by the district court. This is about the same rate of district court dismissals for this reason as before AEDPA. Only 5% of capital cases were dismissed as successive by district courts. Because petitioners must receive authorization to file a successive petition from the court of appeals, additional cases may have been turned away by the courts of appeals, but the study did not collect information about court of appeals activity.

Exhaustion and stays. Before AEDPA, more than half of all claims raised in non-capital cases were dismissed without prejudice because the petitioner had failed to exhaust available remedies in state court. After AEDPA, in only 11% of non-capital cases and in less than 4% of capital cases were all claims dismissed for this reason.

Instead of dismissing unexhausted claims, some courts, particularly in capital cases, are staying exhausted claims to allow the petitioners return to state courts on the unexhausted claims. In non-capital cases, these stays were rare (2.5% of cases), were concentrated in less than a quarter of the districts, and averaged 13 months. Of the capital cases, 17% included at least one stay, which lasted an average of nearly 2 years. The proportion of capital cases stayed varied by district. More than half the cases were stayed in CA-C and 30% or more were stayed in NV, OK-W, PA-E, and FL-M. Only 2 of the 45 cases from TX-N were stayed.

Procedural default as a basis for rejecting a claim is about four times more frequent in capital cases (53% of terminated cases) than in non-capital cases (13% of terminated cases). The default defense was rejected for at least one claim in 16% of the capital cases but in less than 2% of the non-capital cases. In only 1 capital case did the court reject the defense because of the possible innocence of the petitioner. AEDPA did not revise the rules for procedural default, and this defense appears to be applied at about the same rate in non-capital cases after AEDPA (default barred a claim in 13% of cases) as it was before (12% of claims were dismissed pre-AEDPA for this reason).

Teague v. Lane[3] barred review of a claim in 24% of the terminated capital cases; 89% of these cases were from Texas. Only 8 non-capital cases included a ruling that a claim was *Teague*-barred.

[3] 489 U.S. 288 (1989) (barring relief for claim based on legal rule not established at time of state decision).

Processing time

Cases still pending. Of the capital cases filed in 2000, 2001, and 2002, 1 in 4 was still pending in late November 2006, and had been pending for an average of 5.3 yrs. In 5 of the 13 districts, more than half of the cases remained pending. Only 8% of the non-capital cases started in 2003 and 2004 had failed to reach reached disposition by November 2006.

Time in federal court. The average time from start to finish for non-capital cases was 9.5 months. The median disposition time of 7.1 months is more than a month *longer* than the median time of 6 months prior to AEDPA.

Capital cases that had been terminated took *twice as long* as they did before AEDPA, terminating on average after 29 rather than 15 months. About 10% of capital cases were terminated within 3 months, 8 were ended in 1 day or less, of them most involving a successive petition.

Including cases still pending as well those terminated is a more accurate measure of how long these cases take in federal court. Using this measure, non-capital cases filed in 2003 or 2004 have averaged 11.5 months in federal court. Capital cases filed in 2000, 2001, and 2002 have averaged 3.1 years or 37.9 months. Subtracting stayed periods, the average time for capital cases is 2.7 years so far.

If the successive petition bar of AEDPA provides a greater deterrent to the filing of multiple petitions than that provided by pre-AEDPA law, or allows for faster disposition of subsequent petitions, then the Act may result in more time expended per *case* but less time expended per *prisoner*. Further research would be required to test this theory; presently no information exists concerning processing time per prisoner before or after AEDPA.

Given how long capital habeas cases presently take to resolve, the 450-day time limit in AEDPA for resolving capital habeas cases from qualifying states[4] will pose a significant challenge for courts if enforced. AEDPA set a time period during which a federal district court must conclude its review of a habeas petition filed by a prisoner sentenced to death in any state that meets specified standards for providing counsel for state post-conviction proceedings. These disposition deadlines for capital cases have not been enforced because states have yet to meet the statutory standards. The *average* processing time for capital cases in the 13 districts in the study is 1152 days, more than two and a half times as long as the statutory limit. Not one of the 13 districts completed its capital cases in less than 500 days on average, even excluding stayed time.

[4] The disposition deadline was recently changed to 450 days. 28 U.S.C. § 2266(b)(1)(A), effective March 9, 2006.

Features related to variations in processing time:

- **For non-capital cases:**
  - The presence of an attorney was associated with 11% to 49% longer disposition times, and a decreased likelihood of termination. In 93% of non-capital cases, the petitioner had no counsel, approximately the same proportion as prior to AEDPA.
  - Cases in which the state filed an answer or motion to dismiss took about five times longer than cases in which no such pleading was filed.
  - Speedier dispositions were indicated for cases in which all claims were dismissed as unexhausted, as time-barred, as successive.

- **For capital cases:**
  - Each additional day before the counseled petition was filed increased disposition time by 0.1% among terminated cases, and reduced the likelihood of termination by 2%.
  - Neither the presence of an evidentiary hearing or discovery significantly affected either processing time or likelihood of termination, once other factors were taken into account.
  - Examining pending and terminated cases together, the time a case was stayed for exhaustion was strongly associated with a *decreased* likelihood that a case would be terminated. For every additional day a case was stayed, termination was 0.3% less likely. Among terminated capital cases, the length of a stay had no significant effect on termination time, once location was specified.
  - A case dismissed as a successive petition took less time to complete than a case without such an order.
  - Cases with time-barred claims took 47% to 112% *more* days to finish than cases not time-barred, once other factors were taken into account.
  - Any case with at least one claim denied on the merits took, on average, more than twice as long as cases with no merits review.
  - Terminated capital cases in which the court ***granted*** the writ on any claim took 54% to 74% more days to complete, a finding consistent with pre-AEDPA findings that it takes a reviewing court longer to disturb than to affirm a capital conviction or sentence.

- **For both capital and non-capital cases:**
  - The filing of an amended petition was associated with longer disposition time and a decrease in the probability of termination.
  - Each additional claim decreased the likelihood of termination.
  - Most claim types, including claims of new evidence of innocence, were not significantly related to the time for disposition. In capital cases, ineffective assistance of counsel was the only claim associated with *both* a lower likelihood of termination and longer disposition time.
  - Cases in which the magistrate judge filed report and recommendation for the disposition of any claim took longer than cases without such a report.
  - Cases with a defaulted claim took longer than cases without such a ruling.

- The districts with heavier habeas caseloads per judge had longer processing times, on average. For non-capital cases, each additional habeas case per judge extended average disposition time by 0.4% and made termination 1.7% less likely. For capital cases, each additional capital habeas case per judge added about 18% more days to disposition time and reduced the likelihood of reaching termination by about 32%.
- Districts with a larger number of pro se or death penalty law clerks per judge, authorized according to caseload, were associated with a reduced likelihood of termination.
- Even after controlling for other factors, one of the factors with the most powerful associate with processing time for both capital and non-capital cases was the identity of the circuit, district, or state in which the case was filed.
  - Non-capital cases in some districts in the Second Circuit took longer to finish and were less likely to be terminated than cases from some districts in the Seventh Circuit, after controlling for other factors. Comparing disposition time by states produced a similar pattern.
  - Capital cases filed in AZ, OH-S, NV, and PA-E were the slowest in reaching termination among the 13 districts examined. A case started in AL-N, FL-M, OH-N, OK-W, or in Texas was significantly more likely to reach termination than a case filed in the District of Arizona, which had the lowest percentage of terminated cases. Generally, even after controlling for a number of features associated with longer disposition time, capital petitions filed in the four districts in Texas were more likely to be concluded, and concluded sooner, than cases filed in any of the other nine districts in the study.

Disposition

Most habeas petitions continue to be dismissed or denied after AEDPA. In 28% of the capital cases and in 42% of non-capital cases that terminated without either transfer to another district or a grant of relief, the district court dismissed all claims without reaching the merits.

Grants in non-capital cases:

- Of 2384 non-capital filings examined, only 7 petitioners received relief, a rate of 1 in every 341 cases filed, or 1 of every 284 cases terminated other than transfer.
- Each of these 7 cases included a ruling granting the writ for a *conviction*-related error.
- This grant rate of is a decrease in the rate of relief prior to AEDPA, which was reported to be 1 in every 100 non-capital cases.

Grants in capital cases:

- Of the 267 capital cases that were filed in 2000, 2001, and 2002 and terminated in district court before December 2006, about 1 in 8 or 12.4% received relief (13% of first-petition terminations).
- This grant rate is 35 times higher than the rate in non-capital cases.
- Of the 33 cases receiving relief: 23 involved relief from the death sentence alone, 14 were grants based on ineffective assistance of counsel, and 9 were grants based on ineligibility for the death penalty under *Roper, Atkins*, or *Ring*.[5]
- Grants of relief for conviction-related error included violations of the right to the effective assistance of counsel, the right to confront government witnesses, the right to the disclosure of exculpatory evidence, and the right to sufficient evidence of guilt.
- Because cases ending in grant generally take longer to complete than cases ending in denial, it is expected that the grant rate for the 95 capital cases that had not yet been completed by the end of December 2006 will be greater than 13%, but the overall grant rate for the capital case sample is not likely to reach the 40% grant rate reported by one study of published capital cases terminated by 1995 in the *courts of appeals*.[6]

Features related to the probability of relief in capital cases:

- **Evidentiary hearings and discovery**. The presence of an evidentiary hearing in federal court was associated with a 21 to 32 percentage point increase in the likelihood of relief, after controlling for other factors. Also associated with an increased likelihood of relief (9 to 12 percentage points) was an order authorizing a deposition or mental or physical examination.
- **Claim type.** Of nine categories of claims examined, three were associated with a greater likelihood of relief in capital cases. A claim alleging a violation of *Roper*, *Atkins*, or *Ring* raised the likelihood of relief by about 10 percentage points. The presence of a claim of ineffective counsel at sentencing raised the likelihood of relief by about 8 percentage points. A claim raising new evidence of innocence of guilt raised the likelihood of a grant by 10 to 12 percentage points. In none of the 33 cases receiving relief did the federal court grant the writ based on a claim of factual innocence itself. Instead, the presence of an innocence claim made a grant of relief on a *different* claim more likely.

[5] Roper v. Simmons, 543 U.S. 551 (2005); Atkins v. Virginia, 536 U.S. 304 (2002); Ring v. Arizona, 536 U.S. 584 (2002).
[6] Fagan et al, s*upra* note 2.

- **Number of claims and preparation time.** Consistent with pre-AEDPA research, petitioners raising fewer claims were more likely to receive relief. Additional claims increased processing time but not the odds of relief. Lengthier periods for the preparation of the petition did not raise a petitioner's chances either. Because some of the districts with the longest preparation times also had the fewest cases terminated, these findings may change once pending cases are resolved.

- **Standard of review.** Once other factors were taken into account, the application of a standard of review other than that specified by § 2254(d) had no significant relationship to the likelihood of relief for cases that had reached termination.

- **Location.** After controlling for other factors, location remained significantly related to the probability of relief. Compared to judges in PA-E, for example, who granted the writ in 75% of terminated capital cases, judges in Texas were 7% to 22% less likely to grant relief.

AFTER AEDPA: COMPARING CAPITAL TO NON-CAPITAL CASE PROCESSING

Compared to non-capital cases, capital cases:

- Average 1 year longer to reach federal court;
- Average 7 times as many claims per petition;
- Are more frequently stayed for state exhaustion (1 in 6 capital cases compared to 1 in 38 non-capital);
- Include more evidentiary hearings (1 in 10 capital cases compared to 1 in 243 non-capital);
- Are dismissed as time-barred less frequently (4% of capital cases compared to 22% non-capital);
- Take at least 3 times as long to complete; and
- More frequently result in relief for petitioner (1 in 8 completed capital cases compared to 1 in 284 completed non-capital cases).

CONCLUSION

The study suggests that several key aspects of habeas litigation have changed since AEDPA, including slower completion times per case and fewer petitions granted on average. These and other aspects of habeas litigation differ significantly among federal districts. Capital case litigation, moreover, is markedly different than non-capital case litigation. Further research would assist in gaining a more complete understanding of habeas case processing, particularly whether AEDPA has reduced the total number of petitions or processing time per prisoner, and how many cases ultimately receive relief after review in the courts of appeals.